



State of California
Respiratory Care Board
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May 8, 2002

Inquiry: For the seventeen years I have been in the dme/home respiratory business (Home Care) it has been the general practice to have delivery/service technicians perform initial set-up and instruction for basic oxygen, nebulizer compressor and suction units. These technicians were always trained by a licensed Respiratory Therapist and certification of training documented. A licensed Respiratory Therapist would then perform an initial follow-up/assessment within 48- 72 hours of initial delivery.

The home care bulletin released by the joint commission (JCAHO) sights the California Department of Health Services, Food and Drug Administration Division as the source of a state of California "regulation" which is to be interpreted to say that an unlicensed individual such as a delivery/service technician can not do anything except deliver/drop off any respiratory equipment. The California Department of Health Services stated that JCAHO was in error in sighting them and that you, the RCB are the governing authority of this regulation.

I have spent nearly a week researching all applicable agencies and I can not find any language in actual law anywhere that states that delivery of respiratory equipment and instruction on the use of the same prior to assessment and follow-up by a licensed Respiratory Therapist is considered respiratory care. The home care company does not initiate treatment or benefit. That is initiated by the physician at the time he prescribes the service. Please inform me where this is a matter of law or regulation and not interpretation.

Response: In section 3701 of the Respiratory Care Practice Act, the statement clearly reflects the boards continued position regarding the practice of respiratory care by un-licensed personnel. It states, "That the practice of respiratory care in California affects the public health, safety and welfare and is subject to regulation and control in the public's interest to protect the public from the unauthorized and under qualified practice of respiratory care".

It is the intent of the board to ensure that unlicensed personnel are not practicing respiratory care illegally and jeopardizing patient safety. However, it is not the intent to mislead or confuse Home Medical Device Retail Facilities (HMDRF) or unlicensed personnel.

There is a fine line as to when the "instruction in the use of a home medical device" crosses over to the "instruction in the use of a home medical device for the purpose of deriving the intended medical benefit". If the instruction in the use of the equipment is solely focused on the equipment and in no way includes discussion of the patient's condition, a prescription, or any other conversation that would lead to instruction for the "purpose of deriving the intended medical benefit," there is no question that unlicensed personnel are not crossing this fine line.

Reference # 2002-C-19